

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 553

BY SENATOR MAYNARD

[Introduced March 3, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §5B-1A-9 of the Code of West Virginia, 1931, as amended, relating
 2 to removing the liability of railroad companies who give land to nonprofits or state or local
 3 entities for the purpose of developing that land for tourism, rail-to-trail programs,
 4 campgrounds, or parks.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. WEST VIRGINIA RAILS TO TRAILS PROGRAM.

§5B-1A-9. Limitation on liability of persons making land available for trail use without charge.

1 (a) *General rule.* -- Except as specifically recognized or provided in subsection (d) of this
 2 section, an owner, railroad company, or lessee who provides the public with land for use as a trail
 3 under this article or who owns land adjoining any trail developed under this article owes no duty
 4 of care to keep the land safe for entry or use by others for recreational purposes, or to give any
 5 warning to persons entering or going on the trail or adjoining land of a dangerous condition, use,
 6 structure or activity thereon.

7 (b) *Owner.* -- Any person, public agency or corporation owning an interest in land utilized
 8 for recreational trail purposes pursuant to this article shall be treated as an “owner” for purposes
 9 of this article.

10 (c) *Specific limitations on liability.* -- Except as specifically recognized by or provided in
 11 subsection (d) of this section, an owner, railroad company, or lessee who provides the public with
 12 land or who owns adjoining land to the trail under this article is not, by providing that trail or land
 13 or owning land adjoining the trail:

- 14 (1) Presumed to extend any assurance that the land is safe for any purpose;
- 15 (2) Incur any duty of care toward a person who goes on that land; or
- 16 (3) Become liable for any injury to persons or property caused by an act or an act of
 17 omission of a person who goes on that land.

18 (d) *Exception.* --

19 (1) This section does not apply to the owner, railroad company, or lessee of the land used
20 as a trail if there is any charge made or usually made for entering or using the trail or land, or any
21 part thereof.

22 (2) This section does not apply to the owner of land adjoining a trail if there is any charge
23 made or usually made by the owner of such adjoining land for using the trail or land, or any part
24 thereof, or if any commercial or other activity relating to the use of the trail whereby profit is derived
25 from the patronage of the general public is conducted on such adjoining land, or on any part
26 thereof.

27 (3) The foregoing applies whether the person going on the land provided or adjoining is
28 an invitee, licensee, trespasser or otherwise.

29 (4) This section applies to railroad companies who own unused rail lines, and who allow
30 a nonprofit or a local or state governing body to use that property for tourism or the public good,
31 i.e. the development of rail trails, camp areas, playgrounds, and mini-excursions.

32 (e) This article does not relieve any person of liability which would otherwise exist for
33 deliberate, willful or malicious injury to persons or property. The provisions of this article do not
34 create or increase the liability of any person.

NOTE: The purpose of this bill is to include railroad companies as entities who are not liable for allowing old railway paths and stations to be used as rail trails, camps, playgrounds, and other tourism related uses.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.